

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

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|---------------------------|---|-----------------------|
| United States of America, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | File No. 1:18-cr-38 |
| |) | |
| Jorge Mikel Pitts, |) | <u>COURT REDACTED</u> |
| |) | |
| Defendant. |) | |

TRANSCRIPT OF SENTENCING

Taken at
United States Courthouse
Bismarck, North Dakota
January 13, 2021

BEFORE THE HONORABLE DANIEL L. HOVLAND
-- UNITED STATES DISTRICT COURT JUDGE --

APPEARANCES

MR. RICK LEE VOLK
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FOR THE UNITED STATES

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FOR THE DEFENDANT

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Probation Officer: Heather Achtenberg-Heck

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1 (The above-entitled matter came before the Court, The
2 Honorable Daniel L. Hovland, United States District Court
3 Judge, presiding, commencing at 10:00 a.m., Wednesday,
4 January 13, 2021, in the United States Courthouse, Bismarck,
5 North Dakota. The following proceedings were had and made of
6 record in open court with the defendant present.)

7 - - - - -

10:00

8 THE COURT: We will open the record in the case of
9 United States of America versus Jorge Pitts. Here on behalf of
10 the federal government is AUSA Rick Volk. Representing the
11 defendant here is Attorney Kerry Rosenquist. And, Mr. Pitts,
12 how are you?

13 THE DEFENDANT: I'm all right.

10:00

14 THE COURT: As far as the masks are concerned, I
15 don't have a mask on. I feel that I'm adequate social distance
16 from everybody. As far as counsel are concerned and Mr. Pitts,
17 I'll leave it to your discretion. If you're more comfortable
18 not wearing a mask when you talk or at any other time during
19 the hearing, that's fine. If you wish to wear a mask, that's
20 fine as well.

10:01

21 This is scheduled as a sentencing hearing on two
22 separate counts; Count 1, charge of possession with intent to
23 distribute oxycodone; Count 2, possession of a firearm by a
24 prohibited person.

10:01

25 Before today I have carefully reviewed the

10:02

1 Presentence Investigation Report. I've actually reviewed it
2 twice. I've read the Sentencing Memorandum and Supplement
3 submitted on behalf of Mr. Pitts, and I've read every letter of
4 support submitted on behalf of defendant. Read most of those
5 letters twice. I read a letter this morning from Mr. Pitts'
6 girlfriend in Detroit, and there were several letters from his
7 parents, and all very nice supportive letters.

10:02

8 I've also reread Mr. Danny Pitts' most recent letter,
9 where he raised some concerns about earlier convictions
10 identified in the Presentence Report. One was a charge when
11 Mr. Pitts was apparently 14. There was another robbery type
12 attempt case that went to trial.

10:03

13 And then there was a incident referred to in
14 Mr. Pitts' letter about some shoplifting charge in which
15 Mr. Pitts' father, Danny Pitts, was identified in the
16 Presentence Report as actually being present at the time, and
17 Mr. Pitts was -- Mr. Danny Pitts was very concerned about that
18 because he said he's never had any criminal offenses.

10:03

19 Specifically, that would be paragraph 32, a retail fraud
20 charge, disposition unknown.

10:04

21 All of Danny Pitts' concerns are identified -- or at
22 least made a part of the record. None of those convictions
23 that Mr. Danny Pitts referred to in his most recent letter,
24 which is Docket Number 508, were matters that affected the
25 calculation of the sentencing guidelines. They -- none of --

1 those incidents did not impact my decision in this case in any
2 manner, but I understand his concerns, and they are made a part
3 of the record here.

4 Mr. Volk, was there anything else that the government
5 had filed, sentencing memorandum, or --

6 MR. VOLK: No, Your Honor, we did not file a
7 sentencing memorandum.

8 THE COURT: And did you have any objections to the
9 facts contained in the Presentence Report or the guideline
10 calculations?

11 MR. VOLK: I don't have any objections to the facts,
12 Your Honor.

13 with reference to the guideline calculations, I know
14 that those were addressed by Mr. Rosenquist in his Sentencing
15 Memorandum. And as the Court knows from the Plea Agreement
16 here, we had stipulated to or agreed to a base offense level of
17 24, a two-level enhancement for the firearm, the three-level
18 role enhancement, and the acceptance reduction. That would
19 have got us to an offense level of 26, with a criminal history
20 category of III. The range would have been 78 to 97 months.

21 I think that's still a fair and accurate assessment
22 of what Mr. Pitts pled guilty to. I understand how the
23 calculations were made in the Presentence Report and why the
24 probation office found them as they did. We've agreed in the
25 Plea Agreement we're going to be recommending 120 months

1 regardless of where the guidelines fall.

2 THE COURT: So I -- to honor that recommendation, I'd
3 either have to vary upward or vary downward, correct?

4 MR. VOLK: Correct, depending on how the Court wishes
5 to address that. And here's -- here's how I look at this, Your
6 Honor. Mr. Pitts pled guilty to an event. That event happened
7 on -- in January of 2018. That was the traffic stop where he
8 was found to be in possession of the quantity of pills and the
9 firearm. That's what he pled guilty to. And based upon that,
10 we think that the offense level of 26 with the various
11 adjustments that I just noted would apply, and that would
12 result in a range of 78 to 97 months.

13 As is noted in the -- in Mr. Rosenquist's Sentencing
14 Memorandum, in the way we get to 120 months is the Court's
15 consideration of the other conduct that's --

16 THE COURT: Right.

17 MR. VOLK: -- discussed in the -- in the Presentence
18 Report, and I -- I think that's a more fair way to look at the
19 plea and the factual circumstances here, Your Honor. So I
20 would actually ask the Court to adopt what Mr. Rosenquist has
21 noted in his Sentencing Memorandum as -- and what is contained
22 in that Plea Agreement and then vary upward to the 120 months
23 as opposed to adopting what's in the Presentence Report and
24 varying downward, Your Honor.

25 THE COURT: But the net result is the same.

1 MR. VOLK: Exactly.

2 THE COURT: Right. All right. Mr. Rosenquist.

3 MR. ROSENQUIST: Your Honor, I would parrot a lot of
4 what Mr. Volk has already told the Court. These plea
5 agreements that we arrive at, and especially when Mr. Volk
6 agreed to charge out an Information and dismiss the Indictment,
7 they don't come overnight. There's a -- there's a lot of
8 thinking that goes into these things, and we knew, as Mr. Volk
9 has already told the Court, that this was a matter that was
10 going to fall within 74 to 97 months.

11 However, given the -- not necessarily the severity of
12 the offense, but the number of times that Mr. Pitts came to the
13 state of North Dakota, it could be assumed that probably, if we
14 went to trial, other co-defendants might and probably would
15 testify to the fact that Mr. Pitts didn't come empty-handed
16 when he came to North Dakota. But on the other hand --

17 THE COURT: The total pills would have likely been
18 five times what it had been agreed upon in the Plea Agreement.

19 MR. ROSENQUIST: Very well could have been, Your
20 Honor. That being the case, an upward departure is certainly
21 warranted.

22 XX
23 XX
24 XX
25 XX

1 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

2 And then looking at what the other co-defendants
3 ended up with as sentences in this matter, it only made sense
4 that Mr. Pitts wouldn't serve an appreciable amount of time
10:09 5 more than any of the rest of them, and that's where we came up
6 with this -- the idea of just having the Information and doing
7 an upward departure.

8 My client isn't entering any kind of a plea for
9 leniency at this time and asking for the Court to go less than
10:10 10 what the Plea Agreement called for, and that was 120 months,
11 but he's asking the Court to accept the 120 months and not do
12 an upward departure from there.

13 THE COURT: All right. No, I intend to honor the
14 Plea Agreement. It's just a question of how we get there in
10:10 15 terms of the base offense level.

16 But did you, Mr. Rosenquist, have any objections to
17 the facts as outlined in the Presentence Investigation Report?

18 MR. ROSENQUIST: Myself and Ms. Heck had a
19 conversation about it, Your Honor, yes. There was one
10:10 20 paragraph where there was a listing of all the things that my
21 client had supposedly been convicted of, and it also included
22 just kind of rolling on, his two arrests -- or one arrest and
23 then another call that came in on a domestic assault --

24 THE COURT: Right.

10:11 25 MR. ROSENQUIST: -- but there was no -- no

10:11

1 conviction. They were both dismissed, but the casual reader of
2 that paragraph would think that, okay, he was convicted here,
3 he was convicted here, he's convicted here. It doesn't say he
4 wasn't convicted here. It just said that there was an incident
5 of domestic assault.

10:12

6 And, you know, if it's not -- I can see where those
7 things get put in -- put in. I can see where the person would
8 assume that there must be a conviction because there was an
9 arrest, but certainly there wasn't, and there's no paperwork
10 that says there were, and, of course, the Court will note that
11 there was a dismissal.

10:12

12 THE COURT: Right. There was -- paragraphs 33 and 34
13 mentioned two separate domestic violence incidents. One was
14 dismissed. The other was not prosecuted, and they didn't
15 affect the sentencing guideline calculations.

16 MR. ROSENQUIST: But --

17 THE COURT: But do you feel that -- do you have any
18 objections that you feel that I need to address that would in
19 some way affect the sentencing guidelines?

10:12

20 MR. ROSENQUIST: No, Your Honor, there's nothing
21 that's going to affect the sentencing guidelines.

22 THE COURT: All right.

10:12

23 MR. ROSENQUIST: It's just a matter of the record,
24 and my -- my client and, of course, my client's father was
25 somewhat distressed by what he read because it didn't -- I

1 think he read it a little bit differently. I don't think
2 that --

3 THE COURT: Right.

4 MR. ROSENQUIST: -- there's anything written about a
5 murder, attempted murder, so maybe a misunderstanding there,
6 but certainly not a misunderstanding where Mr. Pitts was
7 supposedly at a walmart when -- when there was some shoplifting
8 done. And I'm talking about Danny Pitts, Your Honor.

9 THE COURT: Well, the one paragraph, 25, is -- that
10 was a conviction at age 18, an assault charge. The description
11 of that incident is a bit confusing because it does say the
12 victim shot into his car and hit the passenger, went to the
13 hospital, but recovered. His friends returned fire, which
14 killed the victim, but yet there doesn't --

15 MR. ROSENQUIST: I guess it says that, Your Honor,
16 but nobody died there.

17 THE COURT: Okay. Well, Mr. Danny Pitts' letter is a
18 part of the record, and none of the objections or concerns are
19 matters that impact the sentencing guideline calculations in
20 any way, so I don't need to make any official ruling on or
21 finding on any of those matters.

22 But with respect to the overall base offense level in
23 this case and -- Heather, are you on the phone?

24 THE PROBATION OFFICER: Yes, I am, Your Honor.

25 THE COURT: Okay. What my finding is going to be by

10:14

1 a preponderance of the evidence is that the appropriate base
2 offense level will be what the parties had agreed upon in the
3 Plea Agreement of a 26, so I would request that the Presentence
4 Report be amended to reflect that, and in paragraph 12, to
5 reflect the total quantities of pills and the conversion that
6 had been agreed upon in the Plea Agreement, so that would be
7 changed from a 30 to a 26.

10:15

8 Ms. Heck, I think that you properly calculated the
9 appropriate base offense level in this case. I think the
10 Presentence Report, as originally drafted, was accurate. I
11 think the pill quantities are probably conservative estimates.

10:15

12 But I'll respect what the parties had agreed upon and
13 had contemplated in terms of a base offense level in the Plea
14 Agreement and will make my finding based on a preponderance of
15 the evidence that the appropriate base offense level is 26.
16 All of the other sentencing guideline calculations on page 7
17 and 8 of the Presentence Investigation Report would remain the
18 same.

10:16

19 But what we're left with at the end of the day is an
20 offense level of 26, a criminal history category of III.
21 That's what the parties had agreed upon in their Plea
22 Agreement, and I'll honor that for purposes of the sentencing
23 guideline calculations in this case.

10:16

24 MR. VOLK: Your Honor, if I may, I think the base
25 offense level is actually a 24, and the total adjusted offense

1 level with the firearm and the role enhancement --

2 THE COURT: Yeah, you're right.

3 MR. VOLK: -- it ends up being 26.

4 THE COURT: So, Heather, yeah, that's right. It

10:16

5 should be a base offense level of 24, and make sure that the
6 total number of pills and the conversion of those drug weights
7 are properly recalculated in the Presentence Investigation
8 Report.

9 MR. ROSENQUIST: Your Honor, if I may, I don't mean
10 to beat the dead horse here, but paragraph 15, Ms. Heck had put
11 down a plus-two, I believe, and it should be probably -- a
12 plus-three is what we calculated, and then --

10:16

13 THE COURT: Well, paragraph 15 in the Presentence
14 Report that I have in front of me shows plus-three.

10:17

15 MR. ROSENQUIST: Oh, okay. That's -- you've got the
16 updated one.

17 THE COURT: Yeah.

18 MR. ROSENQUIST: My apologies.

19 THE COURT: So are we all in agreement that
20 everything remains the same in the Amended Presentence
21 Investigation Report other than the base offense level moving
22 down to a 24?

10:17

23 MR. VOLK: Yes, Your Honor.

24 THE COURT: You're on the same page, Mr. Rosenquist?

10:17

25 MR. ROSENQUIST: I am, Your Honor.

1 THE COURT: All right. Good. And, Mr. Pitts, were
2 you given an opportunity to read the Presentence Investigation
3 Report?

4 THE DEFENDANT: Yes.

10:17

5 THE COURT: Have you had a chance to discuss that
6 with your attorney?

7 THE DEFENDANT: Yeah.

8 THE COURT: Okay. Are there any witness that either
9 party intended to call here today?

10:17

10 MR. VOLK: No, Your Honor.

11 MR. ROSENQUIST: No, Your Honor.

10:18

12 THE COURT: All right. So, Mr. Pitts, I'll give both
13 attorneys an opportunity to outline what they're recommending,
14 and it was a joint recommendation in the Plea Agreement. When
15 the attorneys are done, I'll turn to you and give you a chance
16 to speak. If there's anything you want to say, you've got the
17 same right to speak as the attorneys have had in this case.
18 Mr. Volk.

10:18

19 MR. VOLK: Your Honor, pursuant to the Plea Agreement
20 we are recommending the 120-month term of imprisonment, with
21 credit for the time that Mr. Pitts has served to date,
22 three-year term of supervision, the \$200 in special
23 assessments, and we would move to dismiss the Indictment or the
24 Superseding Indictment - I think in this case it's actually the
25 Superseding Indictment - pursuant to that Plea Agreement as

10:18

1 well.

2 Your Honor, we do think the 120-month sentence is a
3 reasonable and fair sentence to impose upon Mr. Pitts
4 considering all of the sentencing factors in 3553(a). This was
5 serious conduct. It involves -- the offense conduct involves a
6 very highly addictive substance, oxycodone, that that has
7 effectively plagued the Fort Berthold area.

8 And I think Mr. Pitts is significantly responsible
9 for some of that addiction taking place up there because of the
10 quantity of pills that he was moving into that area. It's
11 ruined and tarnished the lives of multiple people, not only,
12 you know, those who were charged in this case, but others who
13 were acquiring as well. It's a substantial volume of pills.

14 And when you look at the Presentence Report here,
15 it's clear that this was a financial motivation for Mr. Pitts.
16 He's not a drug user, so he is solely here to make money.

17 And, quite honestly, if it was just a matter of, you
18 know, making money as a drug dealer, he could do that in
19 Michigan, but he's here in North Dakota for a specific purpose,
20 and that purpose is to make more money because he knows that
21 these pills, oxycodone 30-milligram pills, can be sold for a
22 higher price here than they would have been able to be sold in
23 Michigan, so that's why he's here, and it's caused a lot of
24 distress, a lot of destruction up on the reservation.

25 You know, I've read the letters. He's described --

10:20

1 and in the Presentence Report Mr. Pitts is described as a -- by
2 his friends and his family as a very caring individual, and
3 that may be to them, but he certainly was not that to the
4 enrolled members of the tribe up on Fort Berthold because he's
5 caused them an awful lot of pain and destruction. Some of
6 those individuals certainly are complicit to some degree
7 because they're addicts, they're users. They assisted
8 Mr. Pitts in the distribution.

10:21

9 But this is very serious conduct, and that's the
10 reason why, Your Honor, we think, you know, an upward variance
11 from that 78-to-97-month range is specifically applicable here,
12 and I think it's reasonable in light of the other sentences
13 that were imposed here.

10:21

14 The next highest sentence was 78 months, and that was
15 Justin Price, one of the co-defendants in this case. And
16 Justin Price, Your Honor, was a -- was a two-time drug
17 distributor of opiate pills. Frankly, his sentence -- he was
18 serving -- he served a sentence of imprisonment. He continued
19 to use substances while he was in prison, and immediately upon
20 getting out he began using again and then hooked up with
21 Mr. Pitts and others and started distributing again, so his
22 sentence was 78 months.

10:21

10:22

23 The next highest was 60 months, which was
24 Mr. Washington, and so the sentence we're recommending is
25 double that of Mr. Washington's, and it's a little more than

1 40 months greater than what Mr. Price received, and so I think
2 that's fair and reasonable in light of Mr. Pitts being, you
3 know, kind of the top of the rung here.

4 THE COURT: Where's Mr. Lunsford at in the process?

10:22

5 MR. VOLK: He has -- he has entered a guilty plea,
6 Your Honor. We're awaiting sentencing in his case.

7 THE COURT: He is in custody?

10:22

8 MR. VOLK: He is out of custody, I believe, at the
9 present time. I believe he's at a residential re-entry center
10 at the moment, Your Honor.

11 And so that's kind of where -- why we believe that a
12 120-month sentence in total for Mr. Pitts was -- is reasonable
13 and appropriate, Your Honor, and under the circumstances we
14 would ask the Court to adopt that.

10:23

15 THE COURT: So is Mr. Lunsford the last of this group
16 of defendants to be sentenced?

17 MR. VOLK: Yes, Your Honor.

18 THE COURT: Okay. Mr. Rosenquist.

10:23

19 MR. ROSENQUIST: As I said before, Your Honor, we
20 didn't arrive at this Plea Agreement overnight. It took some
21 hammering out, and I appreciate the cooperation in arriving at
22 this Plea Agreement. Mr. Volk of the U.S. Attorney's Office
23 probably precluded having to have a trial in the matter.

10:23

24 Having said that, we agreed in this Plea Agreement to
25 make no recommendation under 120 months, and I'm not going to

1 do so now, but 120 months is an appropriate sentence, I
 2 believe. XX
 3 XX
 4 XX
 5 XX
 6 XX
 7 XX

8 But on the other hand, when we look at the sentences
 9 of the other co-defendants -- as the Court may recall, my
 10 client has been incarcerated now for just about three years.
 11 His first attorney passed away and nobody knew it.

12 THE COURT: Oh, I remember that incident, yeah.

13 MR. ROSENQUIST: And then another attorney was
 14 appointed to represent him, and she withdrew. And then I was
 15 appointed to represent him, so he's been incarcerated now for
 16 three years, and that may have served as a little bit of an
 17 advantage to him because we were able to see what some of the
 18 co-defendants ended up getting sentenced to.

19 But he's young. He doesn't use drugs. If he gets to
 20 the point now that he has learned that you can't make an easy
 21 buck, you have to really work for it, then society is a better
 22 place for it. So I'd ask that the Court follow the Plea
 23 Agreement and sentence my client as is -- as it was worked out
 24 to 120 months.

25 THE COURT: Thank you. Mr. Pitts, I need to give you

1 the same opportunity to speak as others have had here. Is
2 there anything that you would like to say today? Or if you
3 have any questions, you're free to raise those as a part of
4 this hearing.

10:26

5 THE DEFENDANT: Just that I take full responsibility
6 for my actions and consequences that come with it.

7 THE COURT: Where have you been held in custody here
8 in the last year?

9 THE DEFENDANT: Washburn and Ward County.

10:26

10 THE COURT: Have you been treated respectfully?

11 THE DEFENDANT: Yes.

12 THE COURT: Where did you come from today?

13 THE DEFENDANT: Ward.

14 THE COURT: Pardon?

10:26

15 THE DEFENDANT: Ward County.

16 THE COURT: Okay. But your plan is to go back to
17 Detroit when you're done with this case and the sentence?

18 THE DEFENDANT: Yeah.

19 THE COURT: Okay. And as I understand it, your
20 father is retired now, is that correct?

10:27

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. And your mother, does she still
23 work full-time?

24 THE DEFENDANT: Yeah, she's a nurse.

10:27

25 THE COURT: Okay. Have any brothers and sisters back

1 home that live with your parents, or --

2 THE DEFENDANT: I got brothers and sisters. I have
3 brothers and sisters back home.

4 THE COURT: Are they younger than you or older than
5 you?

6 THE DEFENDANT: Older.

7 THE COURT: Okay. And when you were making trips out
8 to North Dakota, was that usually by car?

9 THE DEFENDANT: Yeah.

10 THE COURT: Usually traveling by yourself?

11 THE DEFENDANT: Yeah.

12 THE COURT: Okay. And was it 2016 that you first got
13 started?

14 THE DEFENDANT: Yeah.

15 THE COURT: How was it that you got started? Was it
16 somebody back home that told you about how much money they were
17 making and --

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. But you've never been a pill user,
20 or --

21 THE DEFENDANT: No.

22 THE COURT: Okay. And when you'd come to North
23 Dakota, were you generally staying in the New Town area?

24 THE DEFENDANT: Yeah.

25 THE COURT: Okay. With others that were selling?

1 THE DEFENDANT: Yeah.

2 THE COURT: Anything else anyone wishes to say here
3 today?

4 MR. VOLK: No, Your Honor.

10:28

5 MR. ROSENQUIST: Just placement recommendations, Your
6 Honor. My client, if at all possible, would like a
7 recommendation to the BOP that he be housed in a federal
8 penitentiary in the Ohio area. I don't know what -- what you
9 have in the Ohio area or what the BOP does, but he would like
10 -- appreciate a recommendation to Ohio.

10:29

11 THE COURT: Not Detroit.

12 MR. ROSENQUIST: If there's a federal penitentiary in
13 Detroit, maybe, but I think he wants to stay away from Detroit
14 during his incarceration.

10:29

15 THE COURT: All right. And that's satisfactory to
16 you, Mr. Pitts?

17 THE DEFENDANT: Yeah.

18 THE COURT: I read somewhere, and I don't know if it
19 was in the Presentence Investigation Report or -- that you've
20 had a few fights in jail here in North Dakota?

10:29

21 THE DEFENDANT: Yes.

22 THE COURT: What -- what were those about?

23 THE DEFENDANT: A basketball misunderstanding.

24 THE COURT: Okay. Somebody thought they'd been

10:29

25 fouled and --

1 THE DEFENDANT: Yes, stuff -- yeah.

2 THE COURT: Okay. Did you play basketball in high
3 school?

4 THE DEFENDANT: Yeah.

10:30 5 THE COURT: What school was that?

6 THE DEFENDANT: Fraser.

7 THE COURT: Pardon?

8 THE DEFENDANT: Fraser High School.

9 THE COURT: Okay. What kind of team did you have?

10:30 10 THE DEFENDANT: It was all right.

11 THE COURT: Well, I've reviewed the -- well, first of
12 all, Heather, did you have any questions about my findings in
13 the Presentence Investigation Report?

14 THE PROBATION OFFICER: No, I did not, Your Honor.

10:30 15 THE COURT: And you can -- what do you do, just make
16 -- issue an Amended Presentence Investigation Report?

17 THE PROBATION OFFICER: Yes, one will be filed by the
18 end of the day today.

19 THE COURT: Okay. And again, I'm not in any way
10:30 20 critical of the calculations that you made. I think that they
21 were accurate.

22 But I've reviewed the Presentence Investigation
23 Report. I accept all of the facts contained in the report. In
24 terms of the sentencing guideline calculations, they've been
10:31 25 revised now to reflect an overall offense level of 26 and a

1 criminal history category of III.

2 There have been no other requests for any traditional
3 departures from the guidelines, so I need not address that.
4 With respect to the sentencing factors under 18 USC Section
10:31 5 3553(a), I'm well aware of all of those factors. I have given
6 all of them consideration in this case.

7 Based on the joint recommendation of the parties and
8 the facts of this particular case, and in the broad exercise of
9 my discretion, I will vary upward to the joint recommendation
10:31 10 of the parties of 120 months.

11 And the Eighth Circuit has made it repeatedly clear
12 to sentencing judges in this circuit that when we are
13 addressing and assessing the 3553(a) factors, we are entitled
14 to rely upon all of the factual information contained in the
10:32 15 Presentence Investigation Report, which I have relied upon. We
16 are entitled to rely upon factual information contained in the
17 Sentencing Memorandums and letters of support, arguments of
18 counsel, joint recommendations of the parties and plea
19 agreements, and I've relied upon all of that information.

10:32 20 So it'll be my judgment, Mr. Pitts, that you shall be
21 committed to the custody of the Bureau of Prisons to be
22 imprisoned for a period of 120 months - that was the joint
23 recommendation of all parties - and thereafter placed on
24 supervised release for a period of three years. So the record
10:32 25 is clear, there were two counts. I'm imposing 120 months on

1 each count, to run concurrent with one another. The second
2 count, I assume, carries the ten-year --

3 MR. VOLK: Yes.

4 THE COURT: -- statutory max for guns?

10:33 5 MR. VOLK: That's correct, Your Honor.

6 THE COURT: Okay. And the period of supervision that
7 I'm ordering is three years, and that's three years on each of
8 Counts 1 and 2, to run concurrent with one another, so a total
9 of three years of supervision. I believe that's a sentence
10 that is sufficient but not greater than necessary. I'll
11 dismiss the Superseding Indictment with prejudice.

12 Mr. Pitts, as a part of your sentence I'm ordering
13 that you pay a special assessment of \$200. That's a mandatory
14 fee payable to the District of North Dakota. I don't have the
10:33 15 discretion to waive that. I am not ordering that you pay any
16 fine in this case.

17 In terms of the conditions of supervised release that
18 you're required to comply with, those will all be spelled out
19 in the judgment that I sign, and the judgment is the final
10:33 20 paperwork in this case. I'll sign that today. When you're
21 released from custody, wherever you're living and working and
22 carrying on with your life, you'll be assigned a federal
23 probation officer that'll be supervising you. That person will
24 sit down with you shortly after your release from custody and
10:34 25 again review all of these conditions with you.

10:34

1 If you intend to live in Detroit, Michigan, area, the
2 District of Michigan will have to accept your supervision,
3 which shouldn't be a problem. And generally that paperwork is
4 all taken care of in the months before you're released from BOP
5 custody.

10:34

6 And you will also get a copy of this judgment that
7 I'll sign, so you'll be able to see what all of these
8 conditions are, but I'll summarize them for you. Every
9 defendant that's sentenced in the federal criminal justice
10 system nationwide who's on supervision has to comply with what
11 are known as standard conditions of supervised release.
12 They're uniformly ordered for everybody. The standard
13 conditions require that you live a law-abiding lifestyle. If
14 you break any laws while you're on federal supervision, that's
15 a problem.

10:35

16 The standard conditions also prohibit you from using
17 street drugs. You are prohibited from even associating with
18 people that use street drugs, and that includes prescription
19 drugs for which individuals don't have a prescription.

10:35

20 The standard conditions prohibit you from even
21 associating with individuals that have felony convictions on
22 their record unless your probation officer has approved that
23 association.

10:35

24 Another consequence of having a federal felony
25 conviction is that you are now prohibited for the rest of your

10:36

1 life from ever possessing firearms or ammunition. That's a
2 penalty that's imposed by Congress. Congress has identified
3 certain individuals that are considered to be prohibited
4 persons, and convicted felons are one of those categories, so
5 you can't own a gun. You can't be handling guns, and you can't
6 be around guns.

10:36

7 The one thing that you need to know -- and I'm not
8 telling you this to lecture you or talk down to you. I'm
9 telling you because I hope that you'll never get in trouble
10 again, but some people are of the belief that as long as they
11 don't have a gun in their hands, that they're free and clear of
12 ever being charged with a crime. That's not true.

10:36

13 The term "possession of a firearm" is a rather
14 broadly defined term, and it's something that's usually left up
15 to a jury to decide. But if you're in close proximity to a
16 gun, if you're near a gun and you have access to that gun,
17 you're still probably considered to be in possession of it.

10:37

18 So what that means is that -- and I'll give you some
19 examples. You can't be traveling in a car with somebody else
20 that might have a gun. You need to know who you're getting
21 into a car with. You can't be living in a residence where
22 somebody else might own a gun even if they have it in their
23 bedroom and locked in a safe.

10:37

24 You can't be visiting residences where there might be
25 guns around. You can be over at somebody's house watching a

10:38

1 basketball game, and if there's a firearm around and word gets
2 back to law enforcement that you were over at this apartment or
3 house for three, four hours and there was a semiautomatic
4 handgun sitting on the kitchen counter and the government can
5 show that you were there and were aware of that firearm, you're
6 going to get charged with a firearm offense, one of the most
7 popular crimes charged in federal courts all over the country,
8 felon in possession of a firearm or ammunition.

10:38

9 So you need to be careful about who you associate
10 with and making sure that you don't put yourself in a position
11 where there might be -- you might be where a gun is located.
12 My advice is don't go there. If you think there might be a gun
13 around someplace that you're planning on going to, don't go
14 there. And if you end up someplace in the future where there
15 is a gun, get yourself out of there as fast as you can.

10:38

16 They're popular crimes charged out in every federal
17 district court in this country. And the conviction rate
18 nationwide for the federal government in gun charges is
19 99.6 percent, something like that, which means that the
20 government usually wins gun cases when they go to trial.

10:39

21 And I've tried a lot of gun cases, and I've seen one
22 defendant that was found not guilty in a gun case. And the
23 reason is most juries just aren't very sympathetic towards
24 convicted felons that have put themselves around a gun. Right
25 or wrong, just or unjust, juries are just not very sympathetic

10:39

1 to defendants in those kinds of cases, so that's my advice, for
2 what it's worth.

3 And with your criminal history - and you've got a
4 couple of other gun type offenses or convictions in your past -
10:39 5 you're looking at close to ten years if you're charged and
6 convicted of another gun offense. It doesn't matter what state
7 you're in or what judge you're in front of. I don't want that
8 for you. I -- and I think that you're a smart guy and you know
9 what you need to do to avoid that kind of problem again in the
10:40 10 future, but any questions about gun issues?

11 THE DEFENDANT: No.

12 THE COURT: Okay. And then among the other standard
13 conditions is that you'll be assigned a probation officer. You
14 got to check in with that officer as frequently as they require
10:40 15 it of you. Usually when you start out, they're asking you to
16 check in once a week or once every other week or it might only
17 be once a month. But if you don't check in, that's usually a
18 sign that there's some problems, and then they start writing
19 you up, and we end up back in court.

10:40 20 I have put you on supervision for three years. It
21 doesn't necessarily have to be three years. If you're doing
22 well and you are getting along well with your probation
23 officer, that period of supervision can be shortened. It
24 oftentimes is for people. Under federal law, being convicted
10:41 25 of these offenses, you are required to be on supervision for at

1 least a year, but it doesn't have to be significantly longer
2 than that.

3 If you're doing well, generally what happens is that
4 the probation officer will come to me and say, "Judge,
10:41 5 Mr. Pitts is doing fine. I don't think we need to keep him on
6 supervision for a total of three years. I'd ask that you end
7 the supervision early." And 100 percent of the time in the
8 last 19 years that I've been asked to end somebody's
9 supervision early, I have signed the paperwork and ended it
10:41 10 early. I've never refused to do that for any defendant. So it
11 really depends on how you're doing and how you're getting along
12 with the United States Probation Office in whatever city that
13 you're living in.

14 Any questions about the standard conditions?

10:42 15 THE DEFENDANT: No.

16 THE COURT: Okay. Then I'm ordering some special
17 conditions, and they also require that you comply with them.
18 Any violation of any of these conditions usually means that
19 you're at risk of going back to prison for up to two years.

10:42 20 Special conditions are as follows: I'm ordering that
21 you abstain from using alcohol and street drugs, inhalants and
22 synthetic drugs. Abstain means shall not use.

23 You will be subject to random drug and alcohol
24 screening or testing, as is everybody else in this country
10:42 25 convicted of a drug offense in the federal system.

10:43

1 I'm ordering that you participate in any form of
2 counseling or treatment or programming or classes recommended
3 by your supervising probation officer. By ordering that, I'm
4 not suggesting that you need to go to a long list of classes
5 and treatment. I'm not even remotely suggesting that. I'm
6 just ordering it, and that gives your probation officer
7 discretion, and if he or she feels that maybe you could benefit
8 from some class in your local community, you can be required to
9 take part in that while you're on supervision.

10:43

10 It's not designed to punish you. It's designed to
11 assist you if your probation officer feels you may need some
12 assistance, whether it's -- maybe it's just a class on
13 financial counseling or relationship counseling or cognitive
14 skills.

10:43

15 Another special condition that I'm ordering is that
16 you can be placed in a halfway house at any time while you're
17 on supervised release.

10:44

18 And, finally, I'm ordering a search clause, and
19 search clauses are in place for virtually every defendant
20 sentenced in a federal criminal case. Search clauses simply
21 mean you can be searched by the United States Probation Office
22 any time, any place.

10:44

23 They do not need search warrants or Court orders to
24 conduct searches of you, the residence that you're living in,
25 motor vehicles you're traveling in, computers, computer

1 devices, cell phones, smart phones. They can search all of
2 those things while you're on federal paper.

3 The United States Supreme Court has said they can do
4 that, so there really isn't any question anymore about the
10:44 5 validity of search clauses. You may never be searched, but
6 they always have a right to do it while you're on supervision.
7 Do you feel that you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay. I will recommend to the Bureau of
10:45 10 Prisons that they place you in a low-security facility in the
11 state of Ohio.

12 And the Bureau of Prisons will be the entity that
13 calculates the precise number of days that you've already been
14 in custody. They'll give you credit for that. I don't do that
10:45 15 as a part of my sentence. That's entirely a BOP function.

16 And under the current rules and regulations of the
17 BOP, if you're on good behavior, you're allowed to be released
18 after you've served 85 percent of your sentence. Eighty-five
19 percent of 120-month sentence is 8.5 years, less the time that
10:45 20 you've already served, so there's benefits to being on good
21 behavior and staying out of fights and playing by the rules.

22 And in addition to good-time credit, if you're on
23 good behavior, generally inmates are allowed to serve up to the
24 last year of their sentence in a halfway house with work
10:46 25 release privileges.

10:46

1 Back in December of 2018, Congress passed and the
2 president signed a new law that's -- it's now not so new. It's
3 two years old, but it was called the First Step Act, and under
4 the First Step Act, when you go into federal prison, they're to
5 do an assessment of you and what your needs are, what kind of
6 education or vocational training or treatment or things of that
7 sort that you may need.

10:46

8 And once they identify those needs, if you
9 participate in whatever program they feel is needed for you,
10 you're entitled to earn additional credit towards early release
11 by completing those programs, and you're eligible for all of
12 the new benefits of the First Step Act.

10:47

13 In terms of how soon you'll be leaving North Dakota,
14 that's the great unknown with this Covid-19 pandemic. The
15 Bureau of Prisons is not moving people around the country very
16 quickly anymore. Before Covid-19, usually after I'd sentence
17 somebody in North Dakota, they'd be moving out to a federal
18 prison within two, three weeks. Now it's -- it might be two,
19 three months.

10:47

20 You'll get credit for the time that you're in
21 custody, but BOP is dealing with the pandemic in their
22 institutions. And every time they move people around, they've
23 got to be quarantined when they come into a new jail type
24 facility, and so it's creating problems everywhere, and so I
25 don't know how quickly that you'll move out.

10:48

1 AS soon as I sign the judgment today, it gets
2 electronically filed, and the BOP gets a copy of the judgment,
3 and they get a copy of the new Presentence Investigation
4 Report. And the BOP has a staff down in Grand Prairie, Texas,
5 that decides where you're going to serve the time. They may
6 make that decision in a few weeks, but that doesn't mean that
7 you'll be moved out of North Dakota in a few weeks. It's
8 entirely up to the U.S. Marshal Service and the BOP, I guess,
9 how quickly that you go to any particular facility.

10 But there is certainly a benefit of staying out of
11 trouble in jail and getting that good-time credit. And BOP, in
12 their effort to move more people out of prisons, is really
13 giving people more of a chance and a longer chance to serve a
14 portion of their sentence in a halfway house than what they
15 ever used to do before the pandemic. Any questions?

16 THE DEFENDANT: No.

17 THE COURT: Finally, I need to inform you that you do
18 have a right to appeal. After any defendant is sentenced, they
19 can appeal their case to a higher appeals court. In North
20 Dakota it'd go to the Eighth Circuit Court of Appeals in St.
21 Louis. Defendants can appeal their sentence, and they can
22 appeal any of the conditions of supervision that have been
23 ordered.

24 However, as a defendant, you only have 14 days to
25 appeal, 14 days, two weeks, and that starts today. As soon as

1 I sign the final judgment, which is the final paperwork, then
2 the clock is ticking for your 14 days to appeal. It'll start
3 today.

10:50 4 If you wish to appeal anything that I've done here
5 today, all that you need to do is talk to Mr. Rosenquist, and
6 he can take care of quickly filing a notice of appeal for you.
7 That's what the document is called that protects your appeal
8 rights. It's just a one-page, one-paragraph document, but that
9 has to be filed within 14 days from today or you've lost your
10:50 10 right to appeal. Do you understand that?

11 THE DEFENDANT: Yeah.

12 THE COURT: In the Plea Agreement that you signed -
13 we reviewed it in some detail - there was a paragraph - I
14 believe it was paragraph 24 - in which you agreed that you
10:50 15 would not appeal any sentence up to the joint recommendation of
16 120 months. You had a right to appeal any sentence higher than
17 that, but you said that you would not appeal any sentence up to
18 120 months. The appeals courts hold defendants to those
19 agreements.

10:51 20 I believe you've clearly given up your right of
21 appeal in the Plea Agreement. Most defendants do give up their
22 right to appeal in the plea agreements that they sign as long
23 as -- and as long as they're sentenced in accordance with those
24 plea agreements, they generally don't have a snowball's chance
10:51 25 when they file appeals of their sentence. Do you recall us

1 visiting about that?

2 THE DEFENDANT: Yeah.

3 THE COURT: Okay. I appreciate all the letters that
4 were sent on your behalf. They all spoke very well of you.
10:51 5 And I hope that you've learned a lesson and aren't going to get
6 caught up in the criminal justice system anywhere in this
7 country in the future, whether it's the federal system or the
8 state system or whatever it is.

9 If you get caught up in another drug, oxycodone type
10:52 10 offense in the federal system, you're going to get hammered in
11 federal court in terms of a sentence the next time around.
12 It's going to be at least 180 months, 15 years. It doesn't
13 matter what state that you're in or what judge you're in front
14 of, it's a mandatory minimum of 15 years now.

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22 THE COURT: All right. Mr. Volk, any objections to
23 what's been ordered here today or anything else that I've said
24 or done?
10:57 25 MR. VOLK: No, Your Honor.

1 THE COURT: Mr. Rosenquist?

2 MR. ROSENQUIST: None, Your Honor. Thank you.

3 THE COURT: I want to thank you, Mr. Rosenquist, for
4 your involvement in this case and helping out western North
10:57 5 Dakota in these drug conspiracy cases and negotiating what I
6 believe is a fair and reasonable outcome for Mr. Pitts under
7 all of the circumstances.

8 Mr. Pitts, do you have any questions or concerns that
9 you'd like to raise before we close the record in this case?

10:57 10 THE DEFENDANT: No.

11 THE COURT: I only wish you the best, sir. I hope
12 that you never get caught up in the criminal justice system
13 again. I hope you can serve the time and move on with your
14 life and have a good life from here on out. You're still a
10:57 15 young guy, and you've got a lot of life to live. And I think
16 you're a smart gentleman who can do well for himself and his
17 family.

18 I'll remand you to the custody of the U.S. marshals.
19 we'll stand adjourned.

10:58 20 (Proceedings concluded at 10:58 a.m., the same day.)

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CERTIFICATE OF COURT REPORTER

I, Sandra E. Ehrmantraut, a Certified Realtime Reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated: February 11, 2021

/s/ Sandra E. Ehrmantraut
Certified Realtime Reporter